

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KAREN THOMAS, Executrix of the Estate of : CIVIL ACTION  
PAUL DISARRO, Deceased :  
410 Hilltop Road :  
Riegelsville, PA 18077 :

and

ROBERT L. CAUBLE :  
1910 North Oleander Avenue :  
Daytona Beach, FL 32118 :

Plaintiffs,

v.

UNITED STATES OF AMERICA :  
Federal Aviation Administration :  
800 Independence Avenue, S.W. :  
Suite 912, AGC-400 :  
Washington, DC 20591, :

and

UNITED STATES OF AMERICA, :  
National Transportation Safety Board :  
490 L'Enfant Plaza East, S.W. :  
Washington, DC 20954 :

Defendants. : NO. 03-2381

**CIVIL ACTION**

**The Parties**

1. Plaintiff, Karen Thomas, is an individual, a citizen and resident of the Commonwealth of Pennsylvania residing at 410 Hilltop Road, Riegelsville, PA 18077 and is the Executrix of the Estate of Paul DiSarro, deceased, an individual who was killed in the mid-air collision of two aircraft near Essex County Airport in New Jersey on November 15, 2002.

2. Plaintiff, Robert L. Cauble is an individual, a citizen and resident of the State of Florida residing at 1910 North Oleander Avenue, Daytona Beach, FL 32118.

3. Defendant, United States of America, is a body politic which, for purposes of this litigation, operates through its executive branch, an agency of government known as the Federal Aviation Administration (“FAA”), charged with the responsibility for maintaining documents and data regarding general aviation aircraft, flight paths, and radar.

4. Defendant, United States of America, is a body politic which, for purposes of this litigation, operates through its executive branch, an agency of government known as the National Transportation Safety Board (“NTSB”), charged with investigating fatal aircraft accidents within the United States.

### **Jurisdiction and Venue**

5. This action is brought pursuant to 28 U.S.C. § 1331 in that it arises out of federal statutes, among them the Freedom of Information Act (“FOIA”) 5 U.S.C. § 552 and the Family Assistance Act, 49 U.S.C.A. § 1136.

6. Venue properly lies in this Court pursuant to 28 U.S.C. § 1402 and 5 U.S.C. § 552.

### **Background**

7. Plaintiff, Karen Thomas, is the Executrix of the Estate of Paul DiSarro, deceased, an individual who was killed in the mid-air collision of two aircraft near Essex County Airport on November 15, 2002.

8. Plaintiff, Robert Cauble, is an air traffic control consultant hired by plaintiff’s counsel for purposes of reconstructing radar data and flight path analysis of the mid-air collision.

9. The FAA is an agency of the United States Government responsible to ensure the safety of flight.

10. The NTSB was created pursuant to the Independent Safety Board Act and is an agency of government who is responsible for investigating fatal aircraft accidents within the United States.

11. Plaintiff, Robert L. Cauble, following this accident, sent a Freedom of Information Act request to the FAA, a copy of which is attached as Exhibit "A".

12. The FAA has completed the collection of air traffic control information, including the radar data, which is simply a compilation of information that is run from an air traffic control computer and requires no effort at analysis, development or otherwise, but rather is a ministerial task to produce such data.

13. Upon information and belief, the FAA has also completed air traffic control transcripts as part of its investigation of this accident.

14. The FAA has also performed certain investigations of the qualifications, experience, and events leading up to the accident through its own investigation of air traffic control responsibility for the accident.

15. The FAA has also performed a toxicology study on tissue and/or blood samples from the plaintiff's decedent, Paul DiSarro and has provided a copy of that toxicology study to the NTSB.

16. A FOIA request for that toxicology study was made of the FAA by letter on behalf of plaintiff, Karen Thomas, a copy of which is attached as Exhibit "B".

17. Plaintiff's counsel also requested a copy of the toxicology study from the NTSB pursuant to the Family Assistance Act, a copy of which is attached as Exhibit "C".

18. The Family Assistance Act, *inter alia*, requires the NTSB to communicate and assist the families of passengers with obtaining information concerning an airplane crash.

19. In spite of plaintiff's repeated requests, the NTSB, through its investigator in charge, has provided the plaintiff, either through her counsel or individually, with no information concerning the accident in spite of her repeated requests.

20. There is neither statutory justification nor any basis for the FAA or the NTSB to withhold the information requested.

21. None of the information requested will impair, impede, or otherwise impact the investigation of this accident performed by the NTSB.

22. The FAA, under the Freedom of Information Act, has neither asserted any privilege or any basis upon which it would deny such information to the plaintiff.

23. The FAA has no accident investigation delegation by statute and therefore it has no basis to assert such a privilege, even if it did, which it did not, to deny the information sought by the plaintiff.

24. For the foregoing reasons, plaintiff requests this Honorable Court to order that the FAA produce all air traffic control information concerning or relating to this accident, including but not limited to, radar data, computer data, voice recordings, and other data requested by Robert Cauble in his letter dated November 26, 2002.

25. It is further requested that this Honorable Court order the FAA to produce the toxicology report, which was produced following this accident.

26. The Court is also asked to order the NTSB to provide the toxicology report to the plaintiff under the Family Assistance Act.

WHEREFORE, plaintiffs pray for the relief requested or such other relief as the Court may deem appropriate under the circumstances.

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Date: April 17, 2003